87-866

No.

Supreme Court, U.S.
FILED
NOV 27 1987
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1987

RONALD P. GILLETTE, PETITIONER,

v.

UNITED STATES, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF MILITARY APPEALS

LEO L. SERGI
Colonel, Office of The Judge Advocate General
United States Air Force
HQ USAF/JAJD
Bldg 5683
Bolling AFB, DC 20332-6128
(202) 767-1562
Counsel of Record

and

H. RUSSELL HALPERN
6240 Laurel Canyon Blvd
North Holywood, CA 91606
(818) 508-0063

WILLIAM J. REICHART
Major, Office of the Judge Advocate General
United States Air Force

43 pp

QUESTION PRESENTED

Whether the prosecution use of the Petitioner's request to speak with an attorney prior to interrogation to negate the Petitioner's trial evidence that his alleged confession was not made with a sound mind, violated the Petitioner's Fifth and Sixth Amendment Rights as envisioned by *Doyle v. Ohio*, 426 U.S. 610, and *Wainwright v. Greenfield*, 106 S.Ct. 634.

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Constitutional Provisions Involved	1
Statement of the Case	2
Reasons for Granting the Writ	5
Conclusion	9

TABLE OF AUTHORITIES

Cases:

Griffin v. California, 380 U.S. 609 (1969)	5, 6
Doyle v. Ohio, 426 U.S. 610 (1976)	5, 7
Wainwright v. Greenfield, 106 S.Ct. 634 (1986)	5, 7
United States v. Moore, 1 M.J. 390 (1976)	8
Chapman v. California, 386 U.S. 18 (1967)	8

Constitutions and Statutes:

U.S. Const. Amend. 5	1
U.S. Const. Amend. 6	2
10 U.S.C. § 867(h)(Supp III 1985)	1
28 U.S.C. § 1259(3)(Supp III 1985)	1

Miscellaneous:

Rule 305 of the Military Rules of Evidence, Manual for Courts-Martial, 1984, ("MCM, 1984") Pt. III, Exec. Order No. 12473, 49 Fed. Reg. 17152 (1984)	2

In the Supreme Court of the United States

OCTOBER TERM, 1987

RONALD P. GILLETTE, PETITIONER,

v.

UNITED STATES, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF MILITARY APPEALS

Ronald P. Gillette respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Military Appeals entered in his case on September 28, 1987.

OPINIONS BELOW

The decision of the United States Air Force Court of Military Review was issued on June 12, 1986. The decision of the United States Court of Military Appeals was issued on September 28, 1987.

JURISDICTION

The jurisdiction of this Court is invoked under 10 U.S.C. § 867(h)(Supp III 1985) and 28 U.S.C. § 1259(3) (Supp III 1985). The judgment of the Court of Military Appeals was entered on September 28, 1987.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment provides:

> No person shall be . . . compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . .

Rule 305 of the Military Rules of Evidence, Manual for Courts-Martial, 1984, ("MCM, 1984") Pt. III, Exec. Order No. 12473, 49 Fed. Reg. 17152 (1984), provides, in pertinent part:

> "Rule 305. Warnings About Rights
>
> (a) General Rule. A statement obtained in violation of this rule is involuntary and shall be treated under Mil.R.Evid. 304."

The Sixth Amendment provides:

> "In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defense."

STATEMENT OF THE CASE

On March 11, 1985, the trial of the accused by general court-martial began at George Air Force Base, California. Sixteen days later March 28, 1985, Ronald P. Gillette was found guilty of the premeditated murder of Juana B. Gillette and sentenced to a dishonorable discharge, confinement for life, forfeiture of all pay and allowances, and reduction to the lowest enlisted grade. The convening authority approved the sentence as adjudged on October 18, 1985. On June 12, 1986, the United States Air Force Court of Military Review affirmed the finding of guilty and the sentence. The finding of the Court of Military Review was affirmed on September 28, 1987 by the Court of Military Appeals.

Juana B. Gillette, Petitioner's wife, was found dead at approximately 0900 on the morning of August 28, 1984 in the bedroom of the family quarters located on George Air Force Base, California. Petitioner provided a statement to the Air Force Office of Special Investigations (OSI) on August 28, 1984 wherein he related that on the previous evening his wife had several "Kahlua and milk" drinks, and that he had given her two sleeping tablets. He also stated that she became groggy and that he carried her

upstairs to bed. He then went into his son's room and slept. (Pros. Ex. 10). He got up for work the following day, noticed nothing amiss, and left to take care of some personal matters. When he returned to the quarters at approximately 0900 that same morning, he discovered his wife not moving and called for an ambulance. (*Id.*)

On November 13, 1984, Petitioner was interviewed as a suspect by the OSI. After being advised of his rights under Article 31, Uniform Code of Military Justice (U.C.M.J.) and his right to counsel, Petitioner essentially reiterated his prior version of events. (R. 655-657). During this same interview, Petitioner acknowledged that he had been having an affair of sorts with a woman named Suyen since about 1981, and that he in fact married her on September 8, 1984, approximately 11 days after Juana's death. (R. 657-658). Petitioner was then informed that OSI agents were talking with Suyen, at which time Petitioner became upset, stating that the OSI had ruined everything because he had led Suyen to believe he had discovered Juana when in fact he had not, and that Suyen was unaware that Juana had died at his house. (R. 659).

Petitioner was interviewed the following day by SA Kelly Harrison of the OSI. (R. 150-515, 682-683). After being advised of his rights, Petitioner initially told Harrison the same story he had told previously, but when Harrison stated he did not believe Petitioner's version, Petitioner admitted to killing Juana by placing a plastic bag over her pillow, rolling her face into it and holding her head to the bag for approximately one minute. (R. 168-169, 686-687).

At trial, Petitioner recanted his November 14, 1984 statement to Harrison, testifying that he falsely confessed because of his loss of hope engendered by Suyen's discovery that he was still married to Juana at the time of her death, and Petititoner's fear that Suyen would leave him. (R. 1100-1102).

Dr. Christopher Ebbe, a civilian psychologist, testified for the defense at trial. Prior to trial he had interviewed

Petitioner and conducted a battery of psychological tests. Based on his findings therefrom, Dr. Ebbe rendered two opinions; first, that Petitioner was not the type of person who would likely commit a deliberate, violent crime, and second, that Petitioner's personality was consistent with a person who could falsely confess to a crime he did not commit. (R. 999).

On cross, Dr. Ebbe generally acknowledged that he was not personally aware of the events surrounding the confession, (R. 1011-1013) and that his knowledge of the case was generally limited to petitioner's responses on the psychological tests. (R. 1015). During the examination by trial counsel, the following colloquy occurred regarding the confession:

Q. [trial counsel]. Did you know that [Sergeant Gillette] wanted to cooperate and told the OSI agents he wanted to cooperate, but indicated to them he wanted to talk to a lawyer first? Are you aware of that fact?

DC. Objection, your Honor, to that question.

MJ. I'll overrule that objection and allow the question. The witness may answer if he can.

WIT. I did not know.

Questions by trial counsel.

Q. Does that sound like a man who had no reason to live and just gave up?

A. You've not presented any suggestion to that effect, no.

Q. Isn't it more indicative of a man who is guilty and realized he could be in big trouble once the story was let out?

A. I don't quite understand.

Q. The fact that he wanted to cooperate fully, but then requested a lawyer. That's more indicative of a man who is guilty and knew he could be in big trouble for what he just said.

A. I don't think I'd make that prediction, no.
(R. 1013-1014).

A subsequent motion for mistrial was denied by the military judge. (R. 1027).

During his findings argument, trial counsel argued as follows:

> And he went over, after he admitted that to Special Agent Harrison, and said the same thing to Special Agent Mayo, or at least acknowledged that those facts existed, and that he meant to suffocate her. And he wanted to cooperate. But then he changed his mind. He asked for a laywer. Now, the asking for a lawyer, the reason that is brought out, it's not to indicate that he is guilty or anything, but they brought up the issue that this was a false confession, that he had given up all hope. And the asking for a lawyer certainly doesn't indicate that he had given up all hope.

(R. 1214-1215).

REASONS FOR GRANTING THE WRIT

I

This Court in *Griffin v. California,* 380 U.S. 609 (1969) had held that a defendant's silence could not be used to infer guilt. The holding in *Griffin, supra* was expanded in *Doyle v. Ohio,* 426 U.S. 610 (1976) to prohibit the use of the accused's exercise of his Fifth and Sixth Amendment rights to impeach his testimony at trial. Recently in the case of *Wainwright v. Greenfield,* 106 S.Ct. 634, (1986), this Court held that an accused's request to speak with an attorney prior to questioning could not be used by the prosecution at trial to impeach the defendant's proffered defense of insanity. This case presents a novel application of the rule set out by this court in the *Griffin, Doyle,* and *Wainwright* cases in that the prosecution used the Peti-

tioner's request to speak with an attorney, prior to memoralizing in writing a previous oral confession, to negate defense evidence that the Petitioner was not of sound mind at the time that he made his alleged oral confession.

A decision is needed in this case to clear up any ambiguity as to when, if ever, the prosecution can cite the Petitioner's pretrial exercise of his Fifth and Sixth Amendment rights at his trial.

II

The main thrust of the Petitioner's case was that any earlier admission of killing his wife was false and the product of emotional strain which caused a confused and unsound mental state. In support of this contention the Petitioner presented the testimony of Dr. Ebbe, a psychologist, who, after examining the accused, concluded that, at the time the oral admission was made, the Petitioner was in an unstable frame of mind and could probably have made a false confession. On cross-examination and over defense objection the trial counsel asked Dr. Ebbe:

> Q. Did you know that [the Petitioner] wanted to cooperate, but indicated to them he wanted to talk to a lawyer first?
>
> Are you aware of the fact? Later trial counsel again asked:
>
> Q. The fact that he wanted to cooperate fully, but then requested a lawyer; that's more indicative of a man who is guilty and knew he could be in big trouble for what he just said."

It has been settled law for quite some time that a defendant's silence cannot be used to infer guilt. *Griffin v. California*, 380 U.S. 609, (1969) 85 S.Ct. 1229, 14 L.Ed. 2d 106. However, this Court has recently expanded upon

the doctrine as set out in *Griffin, supra*, by the holding in *Wainwright v. Greenfield*, 106 S.Ct. 634 (1986). The defendant in *Wainwright, supra*, had been arrested for sexual assault. After being advised of his rights, the accused stated that he understood what his rights were and requested the presence of an attorney before talking. The prosecution was allowed to ask the police officer about the defendant's silence, not for the purpose of inferring guilt but to negate the defendant's proffered defense of insanity. This Court in holding that the defendant's silence could not be used to negate his defense of insanity stated:

> "It is fundamentally unfair to promise an arrested person that his silence will not be used against him and thereafter to breech that promise by using the silence to impeach his testimony" (106 S.Ct. 639)

See, Doyle v. Ohio, 426 U.S. 610 (1976).

Like the defendant in *Wainwright, supra*, the petitioner's silence in this case was used to impeach his claim of unsound mind. In *Wainwright*, the mental condition of the defendant was a complete defense whereas in our case, the mental state of Ronald Gillette went solely to the voluntariness of his confession. Nevertheless, the mental stability of Sergeant Gillette was critical in that if the trier of fact had believed that the confession of Mr. Gillette was indeed false, then there would have been very little evidence to tie the defendant to his wife's death. The evidence, absent the Petititioner's confession, established, at most, that Mrs. Gillette died by asphyxiation and that the Petitioner had a motive to kill her. Thus the credibility of the Petititioner's confession was vital to the prosecution's case.

Clearly, the error as cited above was of constitutional dimensions. It is well settled law that before error founded upon the Federal Constitution can be held harmless, the court must be able to say that it was harmless beyond a

reasonable doubt. *United States v. Moore*, 1 M.J. 390 (1976), *Chapman v. California*, 386 U.S. 18 (1967). The government's case centered around the oral admissions of the Petititioner, and the crux of the defense was that due to the mental state of Sergeant Gillette at the time he made those statements they should not be given any credibility. It cannot be said that beyond a reasonable doubt, the trier of fact was not swayed to believe the statements were made with a clear mind after hearing that the defendant had sufficient presence of mind to ask for an attorney. Without the confession, the government's case would have been appreciably weakened, if not totally destroyed.

CONCLUSION

For the foregoing reasons, the petititoner for writ of certiorari should be granted.

Respectfully submitted.

LEO L. SERGI
Colonel, Office of The Judge Advocate General (OTJAG)
United States Air Force
HQ USAF/JAJD
Bldg 5683
Bolling AFB, DC 20332-6128
(202) 767-1562
Counsel of Record

and

H. RUSSELL HALPERN, Esq.
6240 Laurel Canyon Blvd
North Holywood, CA 91606

WILLIAM J. REICHART
Major, OTJAG
United States Air Force

NOVEMBER 1987

APPENDICES

APPENDIX

UNITED STATES COURT OF MILITARY APPEALS

USCMA Dkt. No. 56156/AF
CMR Dkt. No. 25046

UNITED STATES, APPELLEE,

v.

RONALD P. GILLETTE, (571-23-7677) APPELLANT

ORDER

Upon consideration of the petition for grant of review of the decision of the United States Air Force Court of Military Review, it is by the Court this 28th day of September, 1987.

ORDERED:

That said petition is granted; and

That the decision of the United States Air Force Court of Military Review is affirmed.

For the Court,

/s/ John A. Cutts, III
Deputy Clerk of the Court

cc: The Judge Advocate General of the Air Force
Appellate Defense Counsel (HALPERN, Esq.)
Appellate Government Counsel (VAN NUYS)

UNITED STATES AIR FORCE COURT OF MILITARY REVIEW

UNITED STATES

v.

STAFF SERGEANT RONALD P. GILLETTE, FR 571-23-7677
UNITED STATES AIR FORCE

ACM 25046

---

12 June 1986

Sentence adjudged 28 March 1985 by GCM convened at George Air Force Base, California. Military Judge: Allan C. Smith.

Approved sentence: Dishonorable discharge, confinement for life, forfeiture of all pay and allowances and reduction to airman basic.

Appellate Counsel for the Accused: H. Russel Halpern, Esquire, Tarzana, California 91356. Colonel Leo L. Sergi and Lieutenant Colonel Michael D. Wims. Appellate Counsel for the United States: Colonel Kenneth R. Rengert and Captain Marc Van Nuys.

Before

HODGSON, FORAY and MICHALSKI
Appellate Military Judges

DECISION

HODGSON, Chief Judge:

This is an appeal from a conviction for premediated murder. The approved sentence extends to a dishonorable discharge, confinement for life, total forfeitures and reduction to airman basic. Finding no prejudicial error as to either the findings of guilty or the sentence, we affirm.

I

The appellant and the victim were married in October, 1975. In spring, 1982, he met Suyen Gutierrez who was attending a bible college in Henderson, Nevada. Suyen did not know the appellant was married and they became attracted to one another through correspondence and visits by the appellant. Ultimately, in March 1984, the appellant asked Suyen to marry him and eventually she accepted. The wedding was set for 8 September 1984, and the arrangements of the ceremony were begun in late July or early August with the wedding invitations being sent out some time during this period.

At about 0830 hours, 28 August 1984, emergency room personnel from George Air Force Base Hospital, who were responding to a call from the appellant, arrived at his on-base quarters and found Mrs. Gillette lying in bed on her back with the upper portion of her body turned to the left and a brown plastic bag tucked under her head. After attempts to revive her failed, the attending physician pronounced her dead.

In a statement given to investigators the day of the incident the appellant said he and his wife came home about 2230 hours the night before and fed themselves and the children. His wife had three mixed drinks and went to bed. However, she had trouble sleeping and he gave her two sleeping pills. The next morning he saw nothing amiss with either his wife or small son who had gotten in bed with her, and left for work. He returned about 0830 and found his wife still in bed with a plastic bag beneath her head covering her nose and mouth. He went next door to call an ambulance and returned to take his son from the bedroom.

The autopsy revealed a high level of diphenhydramine which is a generic component of over-the-counter sleeping aids such as "NYTOL." The amount of disphenhydramine

in Mrs. Gillette's system would be equal to approximately 10 "NYTOL" tablets. While this dosage is not fatal, it makes a person "very, very, very sleepy and difficult to wake up." The amended autopsy protocol gave the cause of death as "disphenhydramine toxicity and suffocation, minutes to hours, with the contributing causes described as a fatty liver and cardiomyopathy."

On 8 September 1984, the appellant married Suyen Gutierrez and indicated in his marriage license that his first marriage had ended in divorce in 1982.

In a verbal statement given to law enforcement investigators on 14 November, the appellant admitted killing his wife by holding her face down on a pillow covered with a plastic bag until she quit "moving." He explained his action as the result of the "conflict with [his] agreement to marry Suyen [Gutierrez]." He related he slept with his wife until sometime between four and five A.M. when he got up and went down stairs to get a trash bag which he "smoothed" over the pillow. He rolled his wife over, pushed her face into the pillow until she wasn't "moving." He stated he wanted her to suffocate. The investigation disclosed that an alarm clock in the bedroom was set to go off at three. In addition the government established that the appellant was experiencing severe financial problems and was the beneficiary of a $29,000 life insurance policy he carried on his wife.

At trial the appellant denied killing his wife and repudiated his pretrial confession which he contended was false. He testified that when told that Suyen was going to be questioned he was overcome with despair and hopelessness and "felt lost." It was in this frame of mind that he falsely admitted smothering his first wife.

Doctor Christopher Ebbe, a clinical psychologist, testified that it was unlikely that the appellant would commit a deliberate violent crime. Doctor Ebbe was also of the opinion that the appellant's personality made it possible

for him to falsely confess to a crime he had not committed. The defense suggested that Mrs. Gillette's death was suicide.

II

The Initial assigned error urges that the trial court lacked jurisdiction to hear the case as the alleged criminal conduct is not service-connected. This argument has no basis in law. Since the offense occurred at George Air Force Base, there is no question about court-martial jurisdiction over it. *Relford v. Commandant*, 401 U.S. 355 (1971); *United States v. Scott*, 21 M.J. 345 (C.M.A. 1986).

III

Special Agent James K. Poorman is a forensic consultant with the Office of Special Investigations (OSI) in the field of fingerprint identification and analysis. Poorman stated that body surfaces, i.e., fingers, palms and ears give off oils and perspiration and leave a latent impression that is not readily visible to the eye. To "lift" a fingerprint from the surface where it is found to a medium from which it can be more easily examined involves a variety of techniques, chemical and mechanical. Chemical techniques are more commonly used and are divided generally into two categories: 1) iodine and cyanoacrylate fuming, or 2) dusting with silver nitrate. The surface, i.e., porous or non-porous, where the print is discovered determines which technique is best.

Using procedures generally accepted in fingerprint identification on a brown plastic bag found in the appellant's bedroom, Poorman obtained a configuration on the bag that had the characteristics of a face. In his opinion the general outline was that of an eye, nose and an "apparent mouth." He offered no opinion as to the identity of the person represented by the "faceprint." Over defense objec-

tion, the trial judge permitted Poorman to relate to the members the circumstances just recited.

The appellant argues that Poorman's area of expertise, i.e., "faceprint identification" has not gained general acceptance in forensic criminal investigations and therefore does not meet the standard enunciated in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). Accordingly, his testimony should have been excluded. Further, Poorman was not qualified to offer an expert opinion in this case.

In *United States v. Mustafa*, 22 M.J. 165 (C.M.A. 1986), the Court of Military Appeals concluded that Mil. R. Evid. 702 and its parent, Federal Rule of Evidence 702, create a lower threshold for deciding whether an individual is an expert and requires only that the profered witness have some specialized knowledge as a result of experience or education. The touchstone is whether the testimony would be helpful to factfinders. *United States v. Mustafa, supra*; *see United States v. Collins*, 559 F.2d 561 (9th Cir.), *cert. denied*, 434 U.S. 907 (1977).

The forensic fingerprint techniques used by Poorman to obtain the "faceprint" are well established in the scientific community. It should be also remembered that he voiced no conclusion as to whom the "faceprint" belonged. He merely maintained that the plastic bag appeared to have an outline containing facial features. At trial it was uncontraverted that the victim was found in her bedroom with a brown plastic bag under her face. In a statement given the day of the incident, the appellant acknowledged he found his wife in bed with the bag under her head covering her nose and mouth. The medical personnel first on the scene also described the victim's condition in this manner. When viewed in this perspective Poorman's testimony that the plastic bag came into contact with a human face was cumulative of other evidence before the court.

In our view Poorman's specialized knowledge in criminal investigation techniques would be of assistance to

the factfinders. Accordingly, the trial judge did not err in permitting him to testify. *United States v. Mustafa, supra.* Our opinion is limited to the facts of this case. We do not decide if a "faceprint" has sufficient scientific acceptance to be admissible in the same manner as finger and palm prints or as handwriting or voice analysis which are admitted as conclusive proof of identity. On this issue we reserve judgment.

IV

The main thrust of the defense's case was that the appellant's earlier oral admission of killing his wife was false and the result of the intense emotional strain he was undergoing. This assertion was bolstered by the testimony of Doctor Ebbe, a civilian psychologist, who, after examining the appellant, concluded that, 1) the appellant was not the type to commit a deliberate, violent crime, and 2) his personality was consistent with a person who could falsely confess to a crime he did not commit. It was Doctor Ebbe's premise that the false confession was the result of the appellant thinking that "his life was worthless" and he had "given up all hope." He acknowledged, however, he knew nothing about the circumstances surrounding the pretrial statement. During cross-examination and over the defense objection, the trial counsel asked Doctor Ebbe:

> Q. Did you know that [the appellant] wanted to cooperate, but indicated to them he wanted to talk to a lawyer first? Are you aware of that fact?

After the Government briefly explored this area, defense counsel moved for a mistrial which was denied.

On appeal the appellant argues that it was improper to bring to the attention of the triers of fact that an accused, upon being questioned prior to trial, asserted his right to

counsel. *United States v. Moore*, 1 M.J. 390 (C.M.A. 1976). He further contends that the error is of constitutional dimension that requires setting aside his conviction.

The appellant's claim of error must be examined in light of what preceded the question. First, before appellant requested a lawyer he had made a statement incriminating himself in his wife's death. Second, defense counsel told the members during his opening statement that the appellant had confessed, but that the confession was not reliable due to his emotional state. The danger attending the members being told that an accused invoked his right to counsel is that they will infer guilt from his conduct. Here, since the appellant had aleady admitted killing his wife, his terminating the interview by requesting a lawyer did not create an inference of guilt—his prior confession did that.

We will accept, *arguendo*, that the trial judge erred by permitting the question to be asked. We acknowledge that specific evidence of prejudice is not required to compel reversal based on Constitutional error. *United States v. Moore, supra.* Further, before such error can be declared harmless, we must be able to declare a belief that it was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18 (1967); *United States v. Moore, supra; United States v. Harris*, 14 M.J. 728 (A.F.C.M.R. 1982).

The record shows that the appellant had the motive and the opportunity to commit the crime. This coupled with the forensic evidence together with his admission of guilt, albeit retracted at trial, amounts to overwhelming proof of guilt. Applying the exacting standard discussed above to the case before us, we find that the erroneous reference to the appellant's exercise of his right to counsel *after* he confessed did not contribute to his conviction. *See United States v. Johnstone*, 5 M.J. 744 (A.F.C.M.R. 1978); *aff'd* 11 M.J. 88 (C.M.A. 1981).

V.

The appellant next urges that the Government failed to prove that his pretrial statement was voluntary. Involuntary pretrial statements made by an accused are inadmissible as evidence of guilt. Mil. R. Evid. 304(a). An involuntary statement is one "obtained . . . through the use of coercion, unlawful influence or unlawful inducement." Mil. R. Evid. 304(c)(3). The issue before us is whether the trial judge erred in finding that the appellant's statement was not unlawfully coerced, influenced or induced by his interviewers, and this is primarily a factual determination to be decided, in part, on the witness who testified on the suppression motion. *United States v. Schuring*, 16 M.J. 664 (A.C.M.R. 1983). The trial judge, who saw and heard the witnesses is, of course, in the best position to evaluate their credibility. By denying the motion, he found that the appellant was not worthy of belief and police investigators were. We find nothing in the record of trial to warrant setting aside his ruling. *United States v. Garcia*, 15 M.J. 585 (A.F.C.M.R. 1983).

VI

The remaining assigned errors, including those addressed by the appellant in his correspondence to the Court, have been examined and found to be without merit.

For the reasons stated the findings of guilty and the sentence are

AFFIRMED.

Senior Judge FORAY And Judge MICHALSKI concur.

OFFICIAL:

/s/

FELIX LANDAU
Captain, USAF
Chief Commissioner

U.S. GOVERNMENT PRINTING OFFICE: 1987 – 196-953/62016